

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Dilevon Lo, et al.,

No. 2:21-cv-00999-KJM-AC

Plaintiffs,

ORDER

V.

County of Siskiyou, et al.,

Defendants.

17 The Ninth Circuit has held that when a party moves to dissolve a preliminary injunction, a
18 district court must decide, first, “whether the party seeking dissolution of the injunction has
19 established ‘a significant change in facts or law,’” and if so, second, “whether this change
20 ‘warrants . . . dissolution of the injunction.’” *Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir.
21 2019) (per curiam) (alteration in original) (quoting *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th
22 Cir. 2000)). The second inquiry—whether the change warrants dissolution—“should be guided
23 by the same criteria that govern the issuance of a preliminary injunction.” *Id.* Those criteria are
24 the four listed in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008), as the
25 Ninth Circuit has applied them, *see, e.g., All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
26 1131–35 (9th Cir. 2011) (holding the “serious questions” test remains available after *Winter*).

District courts within the Ninth Circuit have interpreted this instruction in at least two ways:

3 (1) The moving party must prove it is entitled to relief from the preliminary injunction
4 under all four of the relevant criteria. *See CW Baice Ltd. v. Wisdomobile Grp.*
5 *Ltd.*, No. 20-03526, 2021 WL 3053147, at *4 (N.D. Cal. July 20, 2021). In other
6 words, the test is conjunctive: the party moving to dissolve a preliminary
7 injunction must show none of the criteria is satisfied.

8 (2) The moving party must show the plaintiffs cannot now satisfy all four parts of the
9 test. *See Index Newspapers LLC v. City of Portland*, No. 20-1035, 2022 WL
10 72124, at *9 (D. Or. Jan. 7, 2022). By this reading, the test is disjunctive: the
11 party moving to dissolve the injunction can prevail by showing any one criterion is
12 unsatisfied.

13 The parties have not addressed these conflicting interpretations. The court has located no
14 relevant binding authority.

15 At oral argument on April 15, 2022, **the parties shall be prepared to discuss** the correct
16 interpretation of *Karnoski*—whether that is one of the two above or another interpretation—and
17 whether the choice affects the outcome of the pending motion to dissolve the preliminary
18 injunction.

19 The unopposed motion to participate further as amici curiae (ECF No. 60) is **granted**.
20 The proposed amicus brief is **deemed filed**.

21 | IT IS SO ORDERED.

22 | DATED: April 5, 2022.

W. Andrew Miller
CHIEF UNITED STATES DISTRICT JUDGE